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### **DTSC REVISED ADVISORY ON THE MANAGEMENT OF SPENT FUELS** July 11, 2023

This advisory is being written to clarify the applicability of a statutory recycling exclusion to the management of certain fuels. The Department of Toxic Substances Control (DTSC) has learned that some generators, transporters, and recyclers of gasoline, diesel, jet fuel, mixtures of these products, and mixtures of these products with other petroleum hydrocarbons such as used oil, brake, transmission, and power steering fluids are calling these mixtures "transmix" (or transportation mix). These entities are sending these wastes to unauthorized facilities as excluded recyclable materials pursuant to Health and Safety Code (HSC) section 25143.2(d)(2)(D) when, in fact, they are not "transmix" and do not qualify for the exclusion cited or any other hazardous waste recycling law exclusion.

These waste management activities are of great concern to DTSC because they are illegal and unfair to businesses that strive to comply with requirements set forth in federal and State law. This advisory serves to alert local agencies to this problem, and to clarify when and how the HSC section 25143.2(d)(2)(D) exclusion applies and does not apply. This advisory explains the meaning of "transmix" and how facilities reclaiming "transmix" or other petroleum products are regulated. This advisory also clarifies when and how certain materials can be managed as "surplus material" or "retrograde material."

#### **BACKGROUND**

The materials of concern are primarily automotive fuels and fluids generated at automobile salvage and dismantling yards that remove gasoline, diesel fuel, used oil, and other hydrocarbon fluids from vehicles prior to salvaging or dismantling. The jet fuels of concern are obtained from jet fuel hydrant systems at various airports. While the automotive wastes are frequently blended together in tanks or containers located at the salvage yards, the mixing of these automotive wastes with jet fuel occurs primarily in tanker trucks that collect material from both salvage yards and airports in the same tanker. Mixing jet fuel with automotive wastes may also occur during truck-to-truck transfers when either truck has collected wastes from automotive salvage or dismantling yards.

#### **HSC SECTION 25143.2(d)(2)(D) EXCLUSION**

Under current federal law, commercial chemical products that are fuels are not regulated as solid wastes when recycled by being burned for energy recovery [see Title 40, Code of Federal Regulations (40 CFR) section 261.2(c)(2)]. Under current State law, these same materials are non-RCRA hazardous wastes when burned for energy recovery [see California Code of

Regulations, title 22 (22 CCR) section 66261.2(d)(2)]; however, under very narrow circumstances, these materials can be excluded from classification as wastes when legitimately recycled.

The following discussion is focused on the bold, italicized language below. The HSC section 25143.2(d)(2)(D) exclusion states that a material that is a non-RCRA hazardous waste managed in accordance with the requirements of HSC section 25143.9 and other conditions set forth in the HSC section 25143.2(d)(2)(D) is excluded from classification as a waste when:

“The material is a fuel that is transferred to and processed into, a fuel or other refined petroleum product **at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144** and meets one of the following requirements:

- (i) the fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris of not more than 2 percent by weight, including, but not limited to rust or sand.**
- (ii) The fuel has been unintentionally mixed with an unused petroleum product.”**

A petroleum refinery as defined in HSC section 25144(a)(4) means an establishment that has a Standard Industrial Classification (SIC) Code of 2911 and that is not subject to the permit requirements for recycling of used oil imposed pursuant to HSC sections 25200 through 25205. SIC Code 2911 refers exclusively to “establishments primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, **through fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes**. Establishments of this industry also produce aliphatic and aromatic chemicals as by-products.”<sup>1</sup>

The HSC section 25143.2(d)(2)(D) exclusion applies when the recyclable material is a fuel contaminated with water, rust, or sand or other nonhazardous debris removed from a tank and transferred to a petroleum refinery processing primarily crude oil or unfinished petroleum derivatives. The exclusion **does not apply** to mixtures of fuels intentionally combined, or to any fuel or combination of fuels mixed with materials that are not fuels (excluding, water or other nonhazardous debris of not more than 2% by weight, including rust or sand). Mixtures consisting solely of fuels meeting the condition in HSC section 25143.2(d)(2)(D)(i) or (ii) may be designated as excluded recyclable materials **only when managed at petroleum refineries having the SIC code 2911**. The exclusion **does not** apply when the material is transferred to any other type of facility including for example, a used oil recycling facility or any location not authorized to manage hazardous wastes. Furthermore, the exclusion **does not** apply when a material such as gasoline is intentionally mixed with any used or unused petroleum product or material such as diesel fuel, transmission fluid, or used oil. Consequently, the materials described in the first and third paragraphs of this letter are hazardous wastes in California and are regulated accordingly.<sup>2</sup>

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<sup>1</sup> <https://www.naics.com/sic-industry-description/?code=2911>

<sup>2</sup> There is an exclusion in HSC section 25143.2(d)(2)(C) that could apply to such material when the mixtures are generated at locations owned by SIC code 2911 facilities or their corporate relatives and when other conditions are met. This advisory does not dwell on that possibility because DTSC does not believe the salvage yards and airports at which the materials in question are generated are owned by petroleum refineries or corporate relatives of petroleum refineries. See HSC section 25143.2(d)(2)(C) for additional details.

## TRANSMIX

“Transmix” (or transportation mix) is a blend of gasoline, diesel, and jet fuel that forms when the products are transported through a common pipeline. More precisely, “transmix” is the combined portion of the pipeline flow that is diverted to a separate tank to avoid contamination between two dissimilar product batches.<sup>3</sup> The intentional mixing of gasoline, diesel fuel, and possibly other hydrocarbons at automotive salvage and dismantling facilities does not create “transmix.” Mixtures of materials collected from salvage yards with jet fuel collected at airports does not create “transmix.” **These intentional blends are instead mixtures of hazardous wastes.** While they are indeed recyclable materials, they are not excluded recyclable materials [i.e., they are not excluded from classification as waste pursuant to HSC section 25143.2(d)(2)(D) or any other provision of the existing hazardous waste recycling law], and their recycling is therefore regulated in the same manner as the recycling of any hazardous waste, meaning that under existing State law they must be recycled at a permitted hazardous waste facility. The HSC section 25143.2(d)(2)(D) exclusion **does not apply to any intentional mixtures of fuels** with or without other petroleum products and transferred to any facility, whether in-State or out-of-State.

***It is important to note that Certified Unified Program Agencies (CUPAs) are responsible to ensure that all generators operating under a claim to a recycling law exclusion meet all conditions necessary before accepting that any recycling law exclusion claimed by any person, including generators, transporters, and recycling facilities, actually applies. Careful attention to all prerequisite details should be paid during inspections and reviews of the notifications required by HSC section 25143.10. The possibility that a person claims that recycling occurs at a SIC code 2911 facility does not make it so. Research is required to check all facts claimed in recycling law notifications and ascertain whether a facility said to be a SIC code 2911 facility is actually a SIC code 2911 facility.***

## SURPLUS AND RETROGRADE MATERIALS

Pursuant to 22 CCR section 66260.10, “Surplus material” means an unused raw material or commercial product obtained by a person who intended to use or sell it, but who no longer needs it, and who transfers ownership of it to another person for use in a manner for which the material or product is commonly used. **Surplus material is excess material.** Surplus material is neither a retrograde material or “recyclable material” as defined in 22 CCR section 66260.10 and regulated pursuant to 22 CCR 66261.6.

As an example, gasoline removed from an automobile tank at salvage yards and transferred to another person for use as gasoline in another gasoline engine would be considered surplus material because it is excess material in its original and unadulterated condition that is being used for its originally intended purpose without prior processing (e.g., filtration). The same may be said for diesel fuel transferred from one vehicle that burns diesel fuel to another person who uses the diesel fuel in a manner for which diesel fuel is intended. Similarly, unused acetone purchased by one person for use as a thinner for polyester resin and transferred to another

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<sup>3</sup> When “transmix” formed in a common pipeline is transferred to an oil refinery having SIC code 2911 for recycling, the HSC 25143.2(d)(2)(C) exclusion applies.

person who uses the excess acetone to remove rosin flux after soldering would be considered surplus material. **The fuel mixtures which are the focus of this advisory are not surplus materials.** (The gasoline and diesel fractions could be surplus materials if managed separately, i.e., if not combined, and if no treatment occurs before transfer by the first owner or use by the second owner is required.)

Pursuant to HSC section 25121.5 and 22 CCR section 66260.10, "Retrograde material" means any hazardous material which is not to be used, sold or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and which meets any one or more of the following criteria:

- (a)(1) has undergone chemical, biochemical, physical or other changes due to the passage of time or the environmental conditions under which it was stored;
- (2) has exceeded a specified or recommended shelf life;
- (3) is banned by law, regulation, ordinance or decree.
- (4) cannot be used for reasons of economics, health or safety or environmental hazard.
- (b) "Retrograde material" does not include material listed in [22 CCR] section 66261.33 if either of the following conditions is met:
  - (1) the material is used in a manner constituting disposal and the material is not normally used in a manner constituting disposal;
  - (2) the material is burned for energy recovery and the material is not normally burned for energy recovery.

As an example, gasoline and diesel removed from automobile tanks at a salvage yard and contaminated with water, rust or dirt may be retrograde materials when managed separately. **A mixture of gasoline and diesel is not retrograde material if intentionally mixed together or intentionally mixed with other hydrocarbons such as used oil.** The fuel mixtures incorrectly called "transmix" and addressed in this advisory are not retrograde materials. They are instead recyclable hazardous wastes that do not qualify for any recycling law exclusion and must therefore be managed as hazardous wastes by generators, transporters, transfer stations, and recycling facilities alike.

If you have any questions regarding the above, please contact DTSC's Regulatory Assistance Office at 800-728-6942 or [RAO@dtsc.ca.gov](mailto:RAO@dtsc.ca.gov) (see <https://dtsc.ca.gov/regulatory-assistance-office/> )